

Response Under 37 C.F.R. § 1.116
Expedited Procedure
Examining Group No. 1600
Application No. 09/743,364
In response to decision dated April 19, 2004
Paper dated October 19, 2004
Attorney Docket No. 4659-002197

REMARKS

Claims 17-18 and 23 are currently pending in this application. The Examiner has maintained the rejection of claims 17-18 and 23 under 35 U.S.C. 102(b) for asserted anticipation by Veldkamp et al. papers published in "Abstracts in General Medical Microbiology, Vol. 97, 1997" and "Antimicrobial Agents and Chemotherapy, Vol 38, 1998)." The dates of publication of the above-cited two papers are May 8, 1998 and September 27, 1998, respectively.

Applicants enclose herein a Declaration Under 37 C.F.R. § 1.131, which states that Karin Ellen Veldkamp, Eric Heezius and Jan Verhoef collaborated with and provided valuable assistance to Applicants during the time that Applicants were reducing the present invention to practice, but Karin Ellen Veldkamp, Eric Heezius and Jan Verhoef were not co-inventors because they did not contribute in any way to the conception of the present invention. Because of this invaluable assistance, Applicants included Karin Ellen Veldkamp, Eric Heezius and Jan Verhoef as co-authors of the publications. Thus, because the disclosure contained in the May 8, 1998 paper was conceived by Applicants and was published within one year of the priority date of July 10, 1998 of the present patent application, the May 8, 1998 paper cannot be considered prior art nor can it be a statutory bar for the present invention. Further, Applicants point out that the second paper, published in "Antimicrobial Agents and Chemotherapy, Vol 38, 1998," postdates the priority date of the present application of July 10, 1998, having a publication date of September 27, 1998.

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For all the foregoing reasons, claims 17-18 and 23 are patentable and in condition for allowance. Reconsideration of the rejections and allowance of pending claims 17-18 and 23 are respectfully requested.

Respectfully submitted,

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